

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4655 of 2015

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Ram Saran Singh, S/o Late Sahdeo Singh R/O Village- Nanauri, P.S- Akbarpur, Dist- Nawada.

.... Petitioner

Versus

1. The State of Bihar through Secretary, Road Construction Department, Vishveshwaraiya Bhawan, Bailey Road Patna (Bihar).
2. The Secretary, Road Construction Department , Vishveshwaraiya Bhawan Bailey Road, Patna-15 (Bihar)
3. The Chief Engineer (Yantrik) Yantrik Uchcha, Path Nirman Bhawan Vishveshwaraiya Bhawan, Bailey Road Patna-15 (Bihar)
4. The Superitending Engineer (Yantrik) Rastriya Uchha Path Yantrik Anchal, Bishweshwaraiya Bhawan Bailey Road, Patna-15 (Bihar).
5. Exective Engineer, Rastriya Uccha Path Yantrik Parmandal, Town & District-Nawada (Bihar)

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Sinha

For the Respondent/s : Mr. P.K. Verma

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

3 22-06-2015 Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads as follows:

“(i) For commanding the respondents to pay to the petitioner the retiral benefit such as pension fixation on the basis of Batching Plant Operator arrear of pension etc.

(ii) To pay statutory as well as penal interest on account of delay in payment in respect of above mentioned dues.”

3. Learned counsel for the petitioner submits that even when the petitioner had retired on 31.12.2010 his retirement benefit has not been paid as a whole. Learned counsel for the petitioner has also laid stress on the aspect that the petitioner will be infact entitled for payment of his entire retirement benefit on

the basis of his holding the post of Batching Plant Operator.

4. In this case a counter affidavit has been filed wherein it has been explained that though the petitioner was appointed on 1.5.1972 on the post of Cleaner under the work charge establishment, he got promoted on the post of Plant Operator only with effect from 7.2.1981. The counter affidavit also gives the full history of service of the petitioner, wherein the promotion given to the petitioner on the post of Plant Operation was sought to be substituted by giving him promotion on the post of Batching Plant Operator with effect from 7.2.1981.

5. Let it be noted that the pay scale of the post of Plant Operator was Rs.205-284, whereas the pay scale of the post of Batching Plant Operator was Rs.335-555. The petitioner obviously could not have earned double promotion w.e.f. 7.2.1981 and therefore, the promotion of the petitioner on the post of Batching Plant Operator was found to be illegal especially when such promotion also was given to him with effect from 7.2.1981. As a matter of fact the post of Batching Plant Operator was itself created and sanctioned with effect from 1.1.1996 and was filled up by giving promotion to the senior most Operator, namely, Sri Basudeo Singh.

6. The petitioner's such cancellation of promotion Batching Plant Operator of the petitioner and order of recovery of



excess salary drawn on account of such promotion though challenge by him was not interfered by this Court and only when the recovery was sought to be made from the petitioner that became the subject matter of C.W.J.C.No. 13354/2008 and its consequential L.P.A.No. 1108/2011 as well as Civil Appeal No. 9118/2012. Under these orders the recovery sought to be made against the petitioner was only interfered.

7. From the counter affidavit it also becomes clear that after the matter has been settled by the judgment of the Apex Court in S.L.P.No. 1174/2012 steps were taken for finalizing the pension but then now the petitioner had adopted an evasive attitude and did not even submit his pension paper in the prescribed period of time. There are full details in the counter affidavit to show that the petitioner despite repeated notices did not submit the pension paper and in fact for this purpose also a newspaper communiqué had to be published.

8. Be that as it may, the petitioner ultimately on fulfilling the prescribed terms and conditions of pension and other retirement benefit as also furnishing the joint photographs of himself and his wife was sanctioned pension and its authorization was made by the Accountant General. Though the counter affidavit also gives each and every detail of events taking place even after the order of the Apex Court on this score as well it

would not be necessary to record all of them, inasmuch as the respondents have now taken a stand that all the relevant orders granting sanction of the post retirement benefit including pension has been issued.

9. In view of above, there would be no difficulty in now directing the respondents to ensure that whatever retirement benefit by way of pension, gratuity, leave encashment and the amount of group insurance is payable to the petitioner treating him to have retired on the post and pay scale of plant operator must be paid to the petitioner for with if not already paid by-now.

10. Reverting back to the claim of the petitioner for payment of all his retirement benefit on the post of Batching Plant Operator this Court would not find him entitled for the same as first of all the petitioner's such promotion was found to be illegal long back prior of 2008 and when challenged by the petitioner in C.W..C. No. 13354/2008 that part of the decision of the Government was never interfered by this Court or Supreme Court. The limited relief of no recovery of excess amount paid to him on account of promotion to Batching Plant Operator would in no view of the matter would make him the entitled to claim payment of retirement benefit of the post and pay scale of Batching Plant Operator. The petitioner infact would be bound by the inter-party order with regard to his so called claim of earning pension on the

post of Batching Plant Operator and cannot be allowed to reopen the same in the garb of seeking a direction for payment of retirement benefit in this writ petition.

11. As with regard to payment of interest this Court would not find him entitled for any such payment primarily on two reasons, firstly, because the petitioner was subjected to recovery and that proceeding continued till 2012-13 and thereafter it was the petitioner who had adopted defiant attitude by not even submitting his pension paper and furnishing the joint photograph, which is absolutely necessary for grant and payment of pension.

12. Thus, this application succeeds only in part to the extent indicated above and respondents are directed to pay all the retirement benefit of the petitioner treating him to have retired on the post and pay scale of Plant Operator within a period of three months from the date of receipt of this order.

13. With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

surendra/-

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